

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5624

DATE COMPLAINT FILED: November 30, 2004

DATE OF NOTIFICATION: December 8, 2004

LAST RESPONSE RECEIVED: January 14, 2005

DATE ACTIVATED: December 1, 2005

EXPIRATION OF STATUTE OF
LIMITATIONS: August 26, 2009

COMPLAINANT: Day L. Merrill

RESPONDENTS: Michael Jaliman for U.S. House of Representatives and
M. Kathryn Jaliman, in her official capacity as treasurer
Michael Jaliman
Philip R. Liebman

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(2)
2 U.S.C. § 434(a)(2)(A)(i)
2 U.S.C. § 434(b)(8)
11 C.F.R. § 100.3
11 C.F.R. § 100.5(d)
11 C.F.R. § 104.3(d)
11 C.F.R. § 104.11
11 C.F.R. § 116.10

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaint in this matter alleges that Michael Jaliman for U.S. House of Representatives ("the Committee"), Michael Jaliman and Philip R. Liebman violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). As set forth in more detail below, it appears that the Committee failed to report a debt in connection with a dispute

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1 concerning campaign services provided by Complainant. However, the available information
2 does not support reason-to-believe findings concerning other allegations in the complaint. We
3 therefore recommend that the Commission find reason to believe the Committee failed to report
4 the disputed debt but, under the circumstances, take no further action. Based on the information
5 at hand, we further recommend that the Commission find no reason to believe either Jaliman or
6 Liebman violated the Act, and close the file in this matter.

7 **II. BACKGROUND**

8 Complainant alleges that she became aware of potential violations of the Act in the
9 course of "participating" in the Jaliman campaign along with her "partner" and "Campaign Web
10 Designer" Michael Locey. Complaint at 1. The complaint consists of four basic allegations.
11 First, Complainant claims that the Committee's "failure . . . to file primary campaign finance
12 information was . . . possibly illegal," and that the 2004 October Quarterly Report "does not
13 appear to represent all relevant information," such as campaign loans, labor costs and other
14 disbursements. *Id.*

15 Next, Complainant asserts that Jaliman requested that Locey and "Campaign Webmaster"
16 John Lansdale "set up an on-line donation capability using VeriSign Payflow that would divert
17 funds collected from on-line campaign donations into an account in the name of Mr. Jaliman's
18 mother, Reva Jaliman." Complainant states that "both Mr. Lansdale and Mr. Locey refused to be
19 a party to what appeared to be illegal activity" *Id.*

20 Third, Complainant claims that Jaliman informed her and Locey that "he had been in
21 contact with a production company that was going to produce political commercials for his
22 website and a cable television campaign." Jaliman allegedly "indicated . . . he was also planning

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1 to create commercials for his consulting firm, Innovation Consultants, and to air them on cable
2 TV to get around rules governing political advertising.”¹ *Id.*

3 Finally, Complainant alleges that “Campaign Coordinator Phil Liebman” asked her and
4 Locey to accept a confidentiality agreement in connection with their campaign services that
5 misrepresented their relationship with the campaign. The agreement allegedly represented that
6 Complainant and Locey provided their services to Jaliman’s consulting firm, Innovation
7 Consultants, instead of directly to the Committee. Complainant states that she and Locey
8 informed Jaliman that they “were unwilling to be a party to deception” and refused to enter into
9 the agreement. *Id.* at 2.

10 Responses were received from Jaliman/the Committee, Liebman and Lansdale; although
11 unsworn, Jaliman signed his and the Committee’s joint response “under penalty of perjury.”²
12 Jaliman claims that the Committee did not cross the \$5,000 political committee threshold until
13 September 2004, and that it filed all the required reports. He also asserts that Complainant and
14 her partner primarily served as volunteers, and as such the value of their labor did not need to be
15 reported.

16 Jaliman claims that no moneys were diverted to the account of his mother Reva Jaliman
17 and that he made no request of his staff to do so. He states that all of the funds paid through
18 Verisign to the on-line credit card facility were transferred automatically by the facility into the
19 Committee’s bank account. Respondent Liebman adds that “at no time was there ever any

¹ Innovation Consultants appears to be a sole proprietorship controlled by Jaliman. *See, e.g.*, Negotiated Settlement in ADR 210 (Memorandum to Commission dated March 4, 2005) (“Jaliman explained that Innovation Consultants is his personal consulting firm listed as a sole proprietorship rather than a corporation.”). The entity was not found in a search of business databases such as Dun & Bradstreet

² We did not notify Lansdale of the complaint; we assume he is responding at the request of the Committee.

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discussion, intent or effort to set up a scheme that would divert funds from the campaign”

Liebman Response at 2. In describing the involvement of Jaliman’s mother, Liebman states that

[it] was a matter of establishing credit worthiness for the campaign in order to eliminate a percentage of the transaction value that would have otherwise been withheld as security to guarantee those transactions. At that point the campaign seemed unable to achieve such credit worthiness on its own.

Id. Campaign webmaster Lansdale states that when he set up the on-line donation system, he

was asked in the application to supply a name of a person who would be financially responsible

to the credit card company, and Jaliman provided the name of his mother. Lansdale asserts that

no money was ever transferred to Jaliman’s mother. Jaliman’s version of events is consistent in

all material respects with the accounts provided by Liebman and Lansdale.

Regarding the “political commercials” allegation, Jaliman states that “[w]e had discussed

running commercials for Innovation Consultants to build name recognition in a dispersed media

market with limited network TV.” Jaliman Response at 4. Based on Jaliman’s reference to a

recent Commission Advisory Opinion, he may have intended to appear in the advertisements,

thereby raising his own personal profile and potentially benefiting the campaign.³ However, both

Jaliman and Liebman claim that no commercials for Innovation Consultants were aired during

the campaign, and a review of the public record (e.g., disclosure reports, Internet and news

databases) uncovered no such information.

Jaliman states that Innovation Consultants was his “consulting company” and acted as a

general consultant to the campaign, obtaining discounted advertising rates on its behalf.

Concerning the confidentiality agreement referenced in the complaint, Jaliman asserts that, just

³ See Advisory Opinion 2004-31 (References to a candidate’s name in radio and television advertisements run by his car dealership relate either to the business entity or to a similarly named individual rather than the candidate; accordingly, the ads would not constitute electioneering communications under the facts presented.)

1 before the general election, Complainant and Locey were about to settle with him “on a joint
2 payment . . . of \$2,000 [from Innovation Consultants] to settle all claims arising from their
3 participation in the campaign.” Jaliman Response at 1. Jaliman claims that Complainant
4 “responded angrily to what I thought was a routine request, that we add a clause to the non-
5 disclosure [sic] stating that they were being paid \$2,000, and that the money was being paid by
6 Innovation Consultants as settlement of all claims.” *Id.* The settlement check was not paid
7 because, according to Jaliman, Complainant Merrill and her partner Locey allegedly cancelled
8 the agreement, asked for more money and threatened to harm the campaign (as discussed below,
9 Jaliman eventually settled with the pair for \$3,800).

10 Respondent Liebman asserts that he had suggested to Complainant that the agreement
11 should be modified to include indemnity and protection to Innovation Consultants and the
12 Committee because the funds demanded by Complainant “were drawn from the account of
13 Innovation Consultants, a private company owned and funded by the Candidate, that had served
14 as an agent for the campaign, and a vehicle by which Michael Jaliman was directing his own
15 personal moneys to support his election bid.” Liebman Response at 2.

16 **III. DISCUSSION**

17 Based on a review of the Committee’s disclosure reports and other available information,
18 it appears that the Committee crossed the \$5,000 expenditure threshold on or around
19 September 9, 2000, five days before Jaliman won the primary election. *See* 2 U.S.C. § 431(2);
20 11 C.F.R. §§ 100.3 and 100.5(d). Accordingly, since pre-primary election reports cover activity
21 only through the twentieth day before the election, such a report was not required.⁴ *See* 2 U.S.C.

⁴ Two other matters involving Jaliman and the Committee were referred to the Commission’s Office of Alternative Dispute Resolution. *See* ADR 210 (MUR 5508) and ADR 258 (MUR 5561). Both of these matters involved, *inter alia*, allegations that the Committee failed to file a pre-primary report in 2004. The Commission approved ADR

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1 § 434(a)(2)(A)(i). However, the Committee may have failed to properly disclose the existence of
2 the disputed debt that apparently prompted the filing of the complaint. *See* 2 U.S.C. § 434(b)(8).

3 Complainant and Jaliman both agree that Complainant and her partner Michael Locey
4 provided services to Jaliman's campaign for which they were not initially paid. The information
5 indicates that, while Complainant and Locey began volunteering on the campaign in late
6 August 2004, they were to become paid staffers following Jaliman's victory in the September 9
7 primary election. *See, e.g.*, Liebman Response at 1. According to a news report detailing
8 Complainant's testimony before a small claims court in December 2004, she and Locey worked
9 part time on the campaign until the end of October 2004, "when they offered to accept \$2,000
10 combined" for their services.⁵ However, the settlement apparently was not consummated until
11 shortly after the court issued a ruling against Jaliman on December 20, 2004; Jaliman appears to
12 have paid Complainant and Locey a total of \$3,800 on or before December 31, 2004.⁶

13 Because the dispute involved unpaid services rendered to Jaliman's campaign, the
14 Committee was required to disclose what it admitted it owed to Complainant and Locey, as well
15 as the amount Complainant and Locey claimed they were owed by the Committee. *See* 2 U.S.C.
16 § 434(b)(8); 11 C.F.R. §§ 104.3(d), 104.11 and 116.10.⁷ Based on a review of the appropriate
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settlement agreements in March and October 2005, which stated that these particular allegations were unsubstantiated. *See* Negotiated Settlements in ADR 210 (Memorandum to Commission dated March 4, 2005) and ADR 258 (Memorandum to Commission dated September 30, 2005) As indicated in these settlement agreements, ADR agreements approved by the Commission have no precedential value with regard to other matters before the Commission.

⁵ Cara Matthews, *Judge Hears Suit Against Failed Hopeful*, THE JOURNAL NEWS (Westchester County, NY) (Dec 15, 2004)

⁶ *See, e.g.*, Cara Matthews, *Ex-candidate Settles Suit by Former Workers*, THE JOURNAL NEWS (Jan. 11, 2004).

⁷ In reporting a disputed debt, a political committee "may also note on the appropriate reports that the disclosure of the disputed debt does not constitute an admission of liability or a waiver of any claims the political committee may have against the creditor." 11 C.F.R. § 116.10(a).

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1 disclosure reports, it does not appear that the Committee ever reported the disputed debt.

2 Accordingly, we recommend that the Commission find reason to believe that Michael Jaliman
3 for U.S. House of Representatives and M. Kathryn Jaliman, in her official capacity as treasurer,
4 violated 2 U.S.C. § 434(b)(8).

5 Complainant's allegation regarding an on-line donation program that may have illegally
6 diverted funds to Jaliman's mother is based solely on a "request" that Jaliman supposedly made
7 to Locey and Lansdale, and is sufficiently rebutted by the responses. The accounts of Jaliman,
8 Liebman and Lansdale are uniformly consistent and detailed in asserting that no moneys
9 collected through the on-line program were transferred to Jaliman's mother. *See, e.g.*, Statement
10 of Reasons in MUR 4960 (Clinton for Senate Exploratory Committee), issued Dec. 21, 2000
11 ("[A] complaint may be dismissed if it consists of factual allegations that are refuted with
12 sufficiently compelling evidence produced in response to the complaint.").

13 Concerning Jaliman's use of Innovation Consultants to air cable TV advertisements "to
14 get around rules governing political advertising," Complainant's personal knowledge appears to
15 be limited to a purported conversation in which Jaliman conveyed his intent to air such
16 advertisements. It is not clear what violation is being alleged and Complainant does not offer
17 any context or specific facts, such as the content of such advertisements. Although Jaliman's
18 response provides additional information clarifying the issue, a "mere conclusory accusation
19 without any supporting evidence does not shift the burden of proof to respondents." Statement of
20 Reasons in MUR 4850 (Deloitte & Touche, LLP), issued July 20, 2000 ("While a respondent
21 may choose to respond to a complaint, *complainants* must provide the Commission with a reason
22 to believe violations occurred."). In any event, there is no information suggesting that such

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1 advertisements were aired during the campaign, based on the responses and other available
2 information.

3 Finally, regarding Jaliman's alleged "misrepresentation" that Complainant's services
4 were provided to his consulting firm rather than to the Committee, it appears that the facts
5 asserted in the complaint would, at most, frame a possible reporting violation by the Committee.
6 Even though the \$3,800 payment resolving the dispute may have come from Innovation
7 Consultants, Complainant appears to have reasonably believed she was providing services
8 directly to the Committee. Accordingly, the Committee appears to have been required to report
9 the resulting disputed debt, as addressed in the reason-to-believe recommendation above.

10
11 we recommend that the Commission send an
12 admonishment letter and take no further action with respect to the Committee. With regard to
13 Jaliman and Liebman (which included a response from candidate Jaliman "under penalty of
14 perjury"), their responses appear to sufficiently rebut the complaint's allegations that they may
15 have personally violated the Act. Accordingly, we recommend that the Commission find no
16 reason to believe that Michael Jaliman or Philip R. Liebman violated any provision of the Act or
17 Commission regulations, and that the Commission close the file in this matter.

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IV. RECOMMENDATIONS

1. Find reason to believe that Michael Jaliman for U.S. House of Representatives and M. Kathryn Jaliman, in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(8), send an admonishment letter and take no further action.
2. Find no reason to believe that Michael Jaliman violated any provision of the Act or Commission regulations in this matter.
3. Find no reason to believe that Philip R. Liebman violated any provision of the Act or Commission regulations in this matter.
4. Close the file.
5. Approve the appropriate letters.

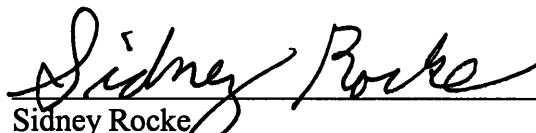
Lawrence H. Norton
General Counsel

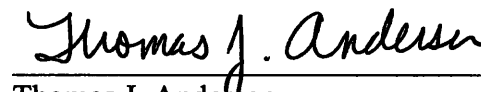
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3/9/06

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